SJA BHD & ANOR

v.

HLB NOMINEES (TEMPATAN) SDN BHD

HIGH COURT MALAYA, PULAU PINANG
SU GEOK YIAM JC
[ORIGINATING SUMMONS NO: 24-1259-2002]
7 OCTOBER 2002

COMPANY LAW: *Meetings - Notice - Notice of defendant's intention to convene extraordinary general meeting - Whether notice contravened time limit prescribed by s. 144(3) of the Companies Act 1965 - Whether notice null and void - Companies Act 1965, s. 144(1), (3)*

STATUTORY INTERPRETATION: *Construction of statutes - Statute must be looked at as a whole - Section 144(3) of the Companies Act 1965 - Meaning of words "from that date" - Whether should be interpreted in their ordinary sense - Intention of legislature - Companies Act 1965, s. 144(1), (3)*

STATUTORY INTERPRETATION: *Construction of statutes - Mandatory or directory - Section 144(3) of the Companies Act 1965 - Whether words "shall not be held" indicate provision to be mandatory in nature - Companies Act 1965, s. 144(3)*

WORDS & PHRASES: *"from that date" - Companies Act 1965, s. 144(3) - Meaning of - Whether refers to date of deposit of requisition*

WORDS & PHRASES: *"shall not be held" - Companies Act 1965, s. 144(3) - Whether words indicate provision to be mandatory in nature*

This was an application by the plaintiffs seeking a declaration that the defendant's solicitor's notice ('the notice') dated 9 July 2002 indicating the defendant's intention to hold an extraordinary general meeting ('EGM') of the first plaintiff on 7 August 2002 was null and void as the notice was in contravention of the time limit prescribed by s. 144(3) of the Companies Act 1965 ('the Act'). The issue that required determination was whether the time for calculating the three months for convening the relevant EGM stipulated in s. 144(3) of the Act runs from the date of the deposit of the relevant requisition or from the expiry of 21 days of the date of the deposit of the said requisition.

The plaintiffs submitted that the words "from that date" in s. 144(3) of the Act referred to the date of the deposit of the requisition to convene the EGM and that the time of three months ran from the date of the deposit of the

requisition *ie*, on 22 April 2002 and not from the expiry of the 21 days from the receipt by the company of the requisition *ie*, on 13 May 2002. The defendant, however, contended that the words "from that date" referred to the date the statutory right accrued in favour of the requisitionists to convene the EGM under s. 144(3) of the Act following the default by the directors to act upon a requisition within 21 days after the deposit of the requisition under s. 144(1) of the Act.

Held:

[1] On a proper construction of s. 144(3) of the Act, the time for calculating the three months for convening the relevant EGM stipulated in the section ran from the date of the deposit of the relevant requisition. The words "from that date" were neither doubtful nor ambiguous and should be taken in their ordinary sense. Therefore, when legislature enacted the two concluding words of s. 144(3) of the Act *ie*, "that date", it must be taken to have intended the cumulative effect of the two words to mean something which was indicated, named and understood, to wit, "the date of the deposit of the requisition". These words were found in s. 144(1) and (3) of the Act, and if legislature had intended to give a different meaning to the concluding word "date" in s. 144(3) of the Act, it would not have used the preceding word "that" to refer to the word "date".
(pp 589 h & 592 f-i)

[2] In the instant case, since the requisition was received by the first plaintiff on 22 April 2002, the EGM should have been convened and held at the latest on 22 June 2002 by the directors. However, since the directors of the first plaintiff did not, between 22 April 2002 and 13 May 2002, issue any notice calling for an EGM, then pursuant to s. 144(3) of the Act, from 14 May 2002 onwards, the defendant was entitled to issue a notice calling for an EGM which should have been held at the latest on 22 July 2002. (p 594 f-g)

[3] In view of the words "shall not be held" in the concluding phrase of s. 144(3) of the Act, *ie*, "but any meeting so convened shall not be held after the expiration of three months from that date" the negative provision was a mandatory one and not merely a directory one. Consequently, the court could not allow the defendant's solicitors' notice dated 9 July 2002 convening the meeting to be held on 7 August 2002 to remain operative since 7 August 2002 was clearly outside the three months period provided and intended by the legislature when enacting s. 144(3) of the Act. (p 596 g-h)

[4] The notice was therefore null and void and of no effect, and an interim injunction was granted in the plaintiffs' favour restraining the defendant

from holding the EGM until final determination of the proceedings. Nevertheless, in view of the obstructive and delaying acts of the defaulting directors, the defendant was given liberty to apply formally for enlargement of time. (p 598 e-g)

[Ordered accordingly.]

Case(s) referred to:

Alexander v. Kirkpatrick [1874] LR 2 Sc & Div 397 ***(refd)***
Asia Commercial Finance (M) Bhd v. Pasadena Properties Development Sdn Bhd & Ors [1990] 2 CLJ 961; [1990] 1 CLJ (Rep) 606 ***(refd)***
Basset v. Basset [1744] 3 Atk 203 ***(refd)***
Bastin v. Davies [1950]2 KB 579 ***(refd)***
Bath v. British Transport Commission [1954] 2 All ER 542 ***(refd)***
Bromley v. Tryon [1952] AC 265 ***(refd)***
Brutus v. Cozens [1973] AC 854 ***(refd)***
Datuk Hamzah Abdul Majid & Anor v. Wembley Industries Holdings Berhad [1998] 4 CLJ Supp 471 ***(refd)***
Henty v. Wrey [1882] 21 Ch D 332 ***(refd)***
Kimpton v. Steel Co of Wales Ltd [1960] 2 All ER 274 ***(refd)***
Lim Hean Pin v. Thean Seng Co Sdn Bhd & Ors [1992] 2 MLJ 10 ***(refd)***
Newcastle Corpn v. A-G [1845] r2 CI & Fin 402 ***(refd)***
NV v. Bremer Handelsgesellschaft MbH, The Hansa Nord [1979] QB 44 ***(refd)***
R v. Ritson [1869] LR 1 CCR 200 ***(refd)***
Re Ariadne Australia Ltd; Votraint No 255 Ltd, v. Capp & Ors [1990] 2 ACSR 791 ***(refd)***
Re Gorham v. Bishop of Exeter [1850] 5 Exch 630 ***(refd)***
Re Warners' Settled Estates, Warner to Steel [1881] 17 Ch D 711 ***(refd)***
See Nyuk Fung & Ors v. Pan Global Equities Bhd [1991] 1 CLJ 452; [1991] 1 CLJ (Rep) 406 ***(refd)***
Stephens v. Cuckfield RDC [1960] 2 QB 373 ***(refd)***
Strother v. Hutchinson [1837] 4 Bing NC 83 ***(refd)***
Willmott v. London Road Car Co Ltd [1910] 2 Ch 525 ***(refd)***

Legislation referred to:

Companies Act 1965, s. 144(1), (2), (3), (4), (5), 128(2), 160(3), 355(3), (4)

Companies Act 1985 [UK], s. 368(4)

Other source(s) referred to:

Charlesworth & Morse, *Company Law*, 16th edn, pp. 214-215
Halsbury's Laws of England, 4th edn, vol 7(1), p 496
Halsbury's Laws of England, 4th edn, vol 44, paras 844-856-857, 865, 868 & 933
Dato' Mahinder & Loh Siew Cheang, *Corporate Powers Controls, Remedies and Decision-Making*, p 484
Shanthy Rachagan, Janine Pascoe & Anil Joshi, *Principles of Company Law in Malaysia*, pp 438-439

The Concise Oxford Dictionary, 9th edn, on p 1444
Walter CM Woon, *Company Law*, pp 131-132

For the plaintiffs - Dato' Mahinder Singh Dulku; M/s Mahinder Singh Dulku & Co
For the defendant - Loh Siew Cheang; M/s Cheang & Ariff

Reported by Suresh Nathan

JUDGMENT

Su Geok Yiam JC:
On 24 July 2002 the plaintiffs filed an application *vide* an originating summons (encl. 2) supported by the affidavit of the 2nd plaintiff affirmed on the same date (encl. 1) together with a certificate of urgency (encl. 3) seeking the determination by the court of the following questions:

Questions for the court's determination:

(1) whether on a proper construction of s. 144(3) of the Companies Act ("the Act") the time for calculating the three months for convening the relevant Extraordinary General Meeting ("EGM") stipulated in the said section runs from the date of the deposit of the relevant requisition or from the expiry of 21 days of the date of the deposit of the said requisition;

(2) whether on a proper construction of s. 144(3) of the Act, the defendant's solicitor's notice dated 9 July 2002 indicating the defendant's intention to hold an EGM of the 1st plaintiff on 7 August 2002 is in contravention of the time limit prescribed by the aforesaid section and is therefore null and void.

In the event that the court was of the opinion that the defendant's intention to hold the EGM of the 1st plaintiff on 7 August 2002 is out of time and in contravention of the time limit prescribed by s. 144(3) of the Act, the plaintiffs prayed for the following reliefs:

Reliefs Prayed For

(a) a declaration that the defendant's solicitors' notice dated 9 July 2002 notifying the board of directors of the 1st plaintiff and the shareholders of the 1st plaintiff that the defendant intends to hold an EGM of the 1st plaintiff on 7 July 2002 at Sri Mas 2 & 3, The City Bayview Hotel, 25-A Farquhar Street, 10200 Penang is null and void and of no effect;

(b) in the meantime an interlocutory injunction restraining the defendant whether by itself or by its servants or agents or otherwise howsoever from holding

the EGM of the 1st plaintiff on 7 July 2002 at Sri Mas 2 & 3, The City Bayview Hotel, 25-A Farquhar Street, 10200 Penang until the final determination of the proceedings herein or until further order of the court;

(c) costs of and incidental to the proceedings be paid by the defendant to the plaintiff;

(d) an order for damages to be assessed by the Senior Assistant Registrar of the court and when so assessed to be paid by the defendant to the plaintiffs; and

(e) further or other relief as the court deems fit and proper.

Facts And Background

The facts and background leading to the above application are as follows:

The 1st plaintiff is a public limited company. The 2nd plaintiff is the corporate and also managing director of the 1st plaintiff. The defendant is a nominee for a group of shareholders of the 1st plaintiff.

On 22 April 2002, the defendant deposited with the 1st plaintiff a requisition for an EGM together with special notice of intended resolutions to remove a number of named directors of the company including the 2nd plaintiff and to appoint two named persons as independent and non-executive directors at the requisitioned EGM pursuant to s. 144(1) of the Act. Twenty-one days passed without the directors of the 1st plaintiff proceeding to take steps to convene the EGM as requisitioned. Upon the default by the directors of the 1st plaintiff to act upon the requisition under s. 144(1) of the Act, the defendant proceeded to convene the EGM pursuant to s. 144(3) of the Act.

On 9 July 2002 the defendant issued a notice of an EGM to be held on 7 August 2002. On 24 July 2002 the plaintiff filed this application to restrain the defendant from holding the EGM on 7 August 2002 on the ground that the defendant is out of time to hold the meeting under s. 144(3) of the Act.

On 29 July 2002, the defendant filed its affidavit-in-reply affirmed on 26 July 2002 by Leong Chin Soon, the Senior Manager Remedial Management Department of Hong Leong Bank Berhad ("HLB") the defendant's principal.

On the same date ie, 29 July 2002, the plaintiffs filed its affidavit-in-reply (encl. 5) affirmed on the same date by the 1st plaintiff.

On 29 July 2002 the court heard submissions from both the learned counsels.

The Submissions Of The Plaintiffs

Dato' Mahinder Singh Dulku, the learned counsel for the plaintiffs, submits

that the words "from that date" refer to the date of the deposit of the requisition to convene the EGM and that the time of three months run from the date of the deposit of the requisition, ie, on 22 April 2002 and not from the expiry of the twenty-one days from the receipt by the company of the requisition, ie, on 13 May 2002. In the absence of any case law on the question he relies on the views expressed by a number of authors (including the learned counsel for the defendant) in their textbooks on company law.

First he refers to pp. 438 and 439 of the book *"Principles of Company Law in Malaysia"* by Shanthy Rachagan, Janine Pascoe and Anil Joshi where it is stated as follows:

> A general meeting other than the statutory meeting and annual general meeting is called an extraordinary general meeting. Under the articles, directors usually have the power to convene such meetings ... .
>
> Section 144 enables members to requisition for the convening of a general meeting in certain circumstances. Under s. 144 directors are required to convene a general meeting on the requisition in writing of:
>
> - in the case of a company with a share capital – members holding not less than ten cent of the capital carrying voting rights; and
>
> - in the case of a company without a share capital – members representing not less than ten per cent of the total voting rights.
>
> ...
>
> *Where the directors fail to convene a general meeting within 21 days following a requisition, the requisitioning members may themselves convene the meeting: s. 144(3). A meeting convened by requisitioning members must be held no more than there months after the making of the requisition to the directors*. (emphasis added)

Secondly he refers to the book on *Company Law* by Walter CM Woon where it is stated as follows on pp. 131 and 132:

> 7.3 EXTRAORDINARY GENERAL MEETINGS
>
> Any general meeting other than the annual meetings is an extraordinary general meeting.
>
> The directors must convene a general meeting if required to do so by requisition, notwithstanding anything in the company's articles. A requisition is a written notice to the directors requiring that a meeting be called. This course is often preferred as the members seldom have the means or the inclination to call a meeting themselves. A meeting may be requisitioned by any members holding not less than 10% of such paid-up capital of the

company as carries voting rights, or in the case of a company without a share capital, by members representing 10% of the total voting rights. The requisition must state the objects of the meeting and must be signed by the requisitions and deposited at the registered office of the company. The directors must convene a meeting to be held as soon as practicable within two months after the receipt of the requisition by the company. *If the directors do not convene a meeting within 21 days after receipt of the requisition, the requisitionists may convene the meeting themselves; in this case the meeting must be held within three months of the date of the deposit of the requisition.* Any reasonable expenses incurred by the requsitionists in calling the meeting are to be paid by the company, which may reimburse itself out of any sums due to the defaulting directors by way of fees or other remuneration. (emphasis added)

Thirdly, he refers to the book by "Charlesworth & Morse on *Company Law*", 16th edition, where it is stated on pp. 214 and 215 as follows:

Extraordinary general meetings

Any general meeting of a company, other than an annual general meeting, is an extraordinary general meeting.

Further, by section 368 [equivalent of our s. 144], despite anything in the articles, the directors are bound to convene an extraordinary general meeting on the requisition of the holders of not less than one-tenth of the paid-up capital of the company carrying the right of voting at general meetings or, if the company has no share capital, of members representing not less than one-tenth of the total voting rights. The requisition must state the objects of the meeting and be signed by the requisitionists. *If the directors do not, within 21 days of the deposit of the requisition at the registered office of the company, proceed to convene the meeting fixed for a date within 28 days of its being summoned the requisitionists, or the holders of more than half their voting rights, may convene it themselves so long as it is held within three months after such deposit.*

The reasonable expenses of the requisitionists in convening the meeting must be repaid by the company, which must retain them out of any remuneration of the directors in default. (emphasis added)

Fourthly, according to Dato' Mahinder, Mr Loh Siew Cheang, the learned counsel for the defendants, has in his book "*Corporate Powers Controls, Remedies and Decision-making*", agreed that the date from whence the three months is to run is the date of the deposit of the requisition and not the date of the expiration of the twenty-one days because the latter has stated as follows on p. 484:

The effects of s. 144(1) is that directors must hold the extraordinary general meeting within two months calculated from the date of receipt of the

requisition. *In reckoning the period of two months in s. 144(1), the period of 21 days in subsection (3) is to be included. This is borne out by the language of s. 144(3), which seeks only to impose a time period within which directors are to act or proceed to convene the extraordinary general meeting, and is intended to provide that upon default by directors to convene the meeting as requisitioned within the period of 21 days, the requisitionists themselves or any one of them acquires the right to proceed to convene the meeting.* (emphasis added)

Dato' Mahinder Singh Dulku also submits that the Supreme Court case of *See Nyuk Fung & Ors v. Pan Global Equities Bhd* [1991] 1 CLJ 452; [1991] 1 CLJ (Rep) 406 is applicable to the facts of the present case and that s. 355(3) of the Act cannot be invoked because no breach has been particularised by the defendant and, consequently, there is nothing to rectify or validate.

He further submits that the court cannot assist the defendant by enlarging the time provided for the holding of the EGM under s. 355(4) of the Act because the defendant has not made a formal application for enlargement of time and it was also held by Zakaria Yatim J (as he then was) in *Asia Commercial Finance (M) Bhd v. Pasadena Properties Development Sdn Bhd & Ors* [1990] 2 CLJ 961; [1990] 1 CLJ (Rep) 606, *inter alia*, that for the court to exercise its discretion whether or not to extend time there must be an affidavit giving reasons why time should be enlarged and the mistake of the defendant's solicitors is not a sufficient reason to grant an extension of time.

The plaintiffs deny the defendant's allegation contained in para. 18 of the defendant's affidavit-in-reply (encl. 4) that the plaintiff hindered the defendant's efforts to convene the EGM before 7 August 2002 by delaying in the supplying of the company's shareholders' list to the defendant.

The plaintiffs say that the list was not supplied because the defendant did not comply with s. 160(3) of the Act by paying in advance a sum of RM3,000.

The plaintiffs also say that the defendant should start afresh by depositing a new requisition for the convening of another EGM.

However, Mr Loh Siew Cheang, the learned counsel for the defendant, submits differently. He says that there are three possible interpretations of the words "from that date" to wit:

(1) from the date of the deposit of the requisition under s. 144(1) of the Act; or

(2) from the date the statutory right accrued in favour of the requisitionists to convene the EGM under s. 144(3) following the default by the directors

to act upon a requisition within 21 days after the deposit of the requisition under s. 144(1); or

(3) from the date that the requisitionists took steps to convene the meeting.

He argues that the second construction is the correct one for the purposes of s. 144(3) of the Act. Construed in this way, it follows that, the EGM convened by the requisitionists must be held on a date which is not later than three months from the date that the statutory right to convene the EGM accrued in their favour, ie, after the lapse of twenty-one days without the directors of the company acting on the requisition by the requisitionists pursuant to s. 144(1).

The reason advanced by him to support such a construction is that since s. 144(1) of the Act gives the directors of the company a time frame of twenty-one days to convene the EGM which must be held within two months from the date the requisition is deposited it is plain that the requisitionists do not have a right to convene the EGM themselves until and unless the twenty-one days have expired without the directors acting upon their requisition.

He relies on the case of *Re Ariadne Australia Ltd; Votraint No 255 Ltd, v. Capp & Ors* [1990] 2 ACSR 791 and on the following submissions:

(1) if it was the intention of the legislature that the EGM convened by the requisitionists under s. 144(3) is to be held within three months after the deposit or receipt of the requisition then the legislature would have used the same language in s. 144(1) and the ending words of s. 144(3) would have read "any meeting so convened shall not be held later than three months after the receipt by the company of the requisition";

(2) the words "from that date" should be read together with the opening words of s. 144(3) of the Act, namely, "If the directors do not within twenty-one days after the date of the deposit of the requisition proceed to convene a meeting" because there is no right on the part of the requisitionists to "convene" the EGM under s. 144(3) of the Act until the lapse of 21 days;

(3) since the Act does not make a distinction between private companies with a few shareholders and a public company with a large number of shareholders having a right to attend and vote at meetings and since s. 160(3) of the Act allows the Registrar of Companies a period of twenty-one days or such further period as the Registrar considers reasonable to comply with a request of, *inter alia*, any member of a company to be furnished with a copy of the register relating to the names, addresses, numbers of shares held and amounts paid on shares of the shareholders an unfair anomaly would arise if the words "from that date" in s. 144(3)

of the Act are to be construed to refer to the date of the deposit of the requisition under s. 144(1) of the Act because the directors will have a longer period to convene and hold the EGM under s. 144(1) of the Act than the shareholders would have under s. 144(3) of the Act in that:

(a) under s. 144(5) of the Act the directors have 60 days (inclusive of the 21 days to decide whether to act upon the requisition or not);

(b) whereas under s. 144(3) of the Act the requisitioning shareholders would have only 48 days (90 days minus the 21 days for the decision of the directors whether to convene the EGM under s. 144(1) of the Act, and minus a further period of 21 days to obtain the register of members under s. 160(3) of the Act).

Alternatively, Mr Loh Siew Cheang submits that in the event his primary submission is incorrect there is power on the court to validate irregularities in proceedings under the Act pursuant to s. 355 of the Act unless in the opinion of the court substantial injustice has been caused or would result to the plaintiffs and which could not be remedied because there is nothing in s. 144(1) or s. 144(3) of the Act to the effect that if an EGM is held outside the two and three months period, respectively, the EGM is an unlawful or void meeting. He also contends that the plaintiffs would not suffer any substantial injustice if the EGM is held some two weeks out of time and that the statutory purpose of s. 144 of the Act is to advance or protect the interests of persons who are requisitionists and not to protect the personal interests of defaulting directors.

He further contends that since the delay in holding the EGM within the three months period has been caused by the plaintiffs' default which resulted in the company's shareholders' list being withheld from the defendant, the defendant should not be put to further expense in order to deposit a fresh requisition for another EGM.

He also disagreed with Dato' Mahinder Singh Dulku that he had touched on s. 144(3) in his book.

Ruling Of The Court

The court ruled as follows in respect of question 1:

that the proper construction of s. 144(3) of the Companies Act 1965 is that the time for calculating the three months for convening the relevant EGM stipulated in the section runs from the date of the deposit of the relevant requisition.

and as follows in respect of question 2:

> that the defendant's solicitors' notice dated 9th July 2002 indicating the defendant's intention to hold an EGM of the first plaintiff on 7th August 2002 is in contravention of the time limit stipulated in the aforesaid section and is therefore null and void.

Consequently, the court granted order in terms of prayers (a), (b), (c) and (d) of the plaintiffs' application.

Reasons For The Court's Ruling

My reasons for doing so are as follows:

Section 144 of the Act contains provisions concerning the convening of an EGM of a company upon the requisition by the members of the company notwithstanding anything in the articles of a company. Pursuant to s. 144(1) of the Act the members must hold not less than 1/10 of the paid-up capital of the company which carries the right of voting at general meetings or in a case of a company not having a share capital, the members must represent not less than 1/10 of the total voting rights of all members having at that date a right to vote at general meetings. These members are referred to as the "requisitionists" in s. 144(2), s. 144(3) and s. 144(4) of the Act. Section 144(2) of the Act requires the requisition to state the objects of the EGM, to be signed by the requisitionists and to be deposited at the registered office of the company. It also provides that the requisition may consist of several documents in like form each signed by one or more requisitionists.

There are two ways in which the EGM is to be convened upon such a requisition being made.

First, pursuant to s. 144(1) of the Act the directors of the company shall forthwith proceed duly to convene the EGM upon the deposit of the requisition. The EGM shall be held as soon as practicable but shall not be held later than two months after the receipt by the company of the requisition.

Secondly, in the event that the directors of the company fail to convene the EGM within 21 days after the date of the deposit of the requisition the requisitionists or any of them representing more than one-half of the total voting rights of all of them, may themselves, pursuant to s. 144(3) of the Act convene the EGM is the same manner as nearly as possible as that in which meetings are to be convened by directors. It is expressly provided in the subsection that "any meeting so convened shall not be held after the expiration of three months from that date".

Section 144(4) of the Act provides that any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene the EGM

shall be paid to the requisitionists by the company. Any sum so paid by the company shall be reimbursed from any fees or other remuneration payable to the directors, who were in default, in respect of services rendered by the directors to the company.

Section 144(5) of the Act provides that in the case of special resolutions which are to be proposed at the EGM, the directors must give notice thereof as is required by the Act otherwise the EGM shall be deemed not to be duly convened.

The question which has arisen in this application is what is the proper construction which should be placed on the concluding words "from that date" in s. 144(3) of the Act.

In view of the importance of the construction of the concluding three words in s. 144(3) and the difference in the wording of s. 144(1) of the Act it is essential to reproduce below both the subsections:

144 Convening of extraordinary general meeting on requisition

(1) *The directors of a company,* notwithstanding anything in its articles, *shall on the requisition of members holding at the date of the deposit of the requisition* not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than one-tenth of the total voting rights of all members having at that date a right to vote at general meeting, *forthwith proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition*.

(2) ...

(3) *If the directors do not within twenty-one days after the date of the deposit of the requisition proceed to convene a meeting the requisitionists, or any of them* representing more than one-half of the total voting rights all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be *convened by directors convene a meeting but any meeting so convened shall not be held after the expiration of three months from that date*.

(4) ...

(5) ...

(emphasis added)

The principles of law relating to statutory interpretation are well established. The following principles are applicable in the instant case.

The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself. (See *Halsbury's Laws of England*, 4th edn, vol. 44, para 856).

If the words of a statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of Parliament, and there is no need to look elsewhere to discover their intention or their meaning. (See *Halsbury's Laws of England*, 4th edn, vol 44, para 857).

Where the words used are familiar and are in common and general use in the English language it is inappropriate to try to define them further by judicial interpretation and to lay down their meaning as a rule of construction and the only question for a court is whether the words are apt to cover or describe the circumstances in question in a particular case (See *Halsbury's Laws of England*, 4th edn, vol 44, para 865; *Bath v. British Transport Commission* [1954] 2 All ER 542 at 543, [1954] 1 WLR 1013, CA; *Kimpton v. Steel Co of Wales Ltd* [1960] 2 All ER 274 at 276, 277, [1960] 1 WLR 527 at 529, 530, CA; *Stephens v. Cuckfield RDC* [1960] 2 QB 373 at 382, 383, [1960] 2 All ER 716 at 719, 720, CA; *Brutus v. Cozens* [1973] AC 854, [1972] 2 All ER 1297, HL).

The words of a statute are to be taken in their ordinary sense. (See *Halsbury's Laws of England*, 4th edn, vol 44, para 868).

In my considered opinion the words "from that date" are not doubtful nor ambiguous. This is because the word "that" which appears in between the word "from" and the word "date" is given, *inter alia*, the following meaning by *The Concise Oxford Dictionary*, 9th edn, on p. 1444:

> 1 designating the person or thing indicated, named, understood, etc. (look at that dog; what was that noise?)

It would follow, therefore, that when the legislature enacted the two concluding words of s. 144(3) of the Act, ie, "that date" it must be taken to have intended the cumulative effect of the two words to mean something which is indicated, named and understood, to wit, "the date of the deposit of the requisition". These words are found in s. 144(3) of the Act and also in s. 144(1) of the Act. In my judgment if the legislature had intended to give a different meaning to the concluding word "date" in s. 144(3) of the Act it would not have used the preceding word "that" to describe or refer to the word "date".

The court's view is fortified by the legislature's choice of the concluding words in s. 144(1) of the Act, to wit, "but in any case not later than two months after the receipt by the company of the requisition" which clearly differ from those in s. 144(3) of the Act, to wit "but any meeting so convened shall not be held after the expiration of three months from that date".

The distinction is warranted because under s. 144(1) of the Act it is the directors who convene the EGM and it is only reasonable and logical that time should only run from the date the company receives the requisition deposited by the requisitionists whereas under s. 144(3) of the Act, it is the requisitionists who convene the meeting and therefore, it is only reasonable and logical that time should run from the date they deposit the requisition which date is a fact within their special knowledge.

The construction adopted by the court is also fortified by the following excerpt taken from *Halsbury's Laws of England*, 4th edn, vol. 7(1), on p. 496:

> 698. Requisition for meeting
>
> If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting. The notice convening the meeting need not state the statutory authority under which it is convened, nor is it necessary for the notice to be signed by all the requisitionists provided documents accompanying the notice clearly indicate that the meeting is in fact being called by all of them; **but any meeting so convened must not be held after the expiration of three months from the date of deposit of the requisition**. (emphasis added)

The section in the English Companies Act 1985 which is equivalent to s. 144(3) of the Act is s. 368(4). The subsection provides as follows:

> If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.

Even assuming for a moment that the court is in agreement with Mr Loh Siew Cheang that the words "from that date" are doubtful or ambiguous in their meaning, the opinion expressed in legal textbooks by authors of established reputation may be considered not as authority on the construction but as evidence of the construction which has been generally accepted in the legal profession. (Sir Edward Coke: see *Strother v. Hutchinson* [1837] 4 Bing NC 83 at 89; *Newcastle Corpn v. A-G* [1845] r2 CI & Fin 402 at 419, HL; *Re*

Gorham v. Bishop of Exeter [1850] 5 Exch 630; *Willmott v. London Road Car Co Ltd* [1910] 2 Ch 525, CA. As to other authors, see *R v. Ritson* [1869] LR 1 CCR 200 at 203; *Re Warners' Settled Estates, Warner to Steel* [1881] 17 Ch D 711 at 713; *Bastin v. Davies* [1950] 2 KB 579 at 581, [1950] 1 All ER 1095 at 1096 DC; *NV v. Bremer Handelsgesellschaft MbH, The Hansa Nord* [1979] QB 44 at 59, 72, [1975] 3 All ER 739 at 746, 757, CA per Lord Denning MR and Roskill LJ; *Basset v. Basset* [1744] 3 Atk 203 at 208, *Alexander v. Kirkpatrick* [1874] LR 2 Sc & Div 397 at 400, HL; *Henty v. Wrey* [1882] 21 Ch D 332 at 348, CA; *Bromley v. Tryon* [1952] AC 265 at 274, 275, [1951] 2 All ER 1058 at 1065, HL; See *Halsbury's Laws of England*, 4th edn, vol. 44 para 844).

As stated earlier, there is a distinction between the time prescribed in s. 144(1) and that in s. 144(3) of the Act for the holding of the EGM.

Where the directors themselves convene the EGM the EGM must be held within two months from the date of the receipt of the requisition. However, where the requisitionists or any of them representing more than one-half of the total voting rights of all of them convenes the EGM the EGM must be held within three months from the date of the deposit of the requisition. This means that when the requisitionists or any of them who qualifies to do so convenes the EGM they or he is given another month to do so in order to take into account the period of 21 days which is given to the directors to convene the EGM. It is only after the expiration of the 21 days without the directors convening the EGM that the shareholders or members concerned can themselves proceed to convene the EGM.

In the instant case since the requisition was received by the 1st plaintiff on 22 April 2002, the EGM should have been convened and held at the latest on 22 June 2002 by the directors. However, since the directors of the 1st plaintiff did not, between 22 April 2002 and 13 May 2002, issue any notice calling for an EGM then pursuant to s. 144(3) of the Act starting from 14 May 2002 onwards the defendant is entitled to issue a notice calling for an EGM which should have been held at the latest on 22 July 2002.

The court is satisfied in the light of para. 11 of the defendant's affidavit-in-reply (encl. 4) that the defendant had taken immediate steps towards the convening of the EGM through its solicitors in that on 14 May 2002 the defendant's solicitors requested *vide* a letter dated the same date (exh. "4") the company secretary of the 1st plaintiff to confirm if any steps had been taken to convene the EGM. But there was no reply from the 1st plaintiff.

The defendant's solicitors also sent a letter dated the same date (exh. "5") to the share registrars of the 1st plaintiff, namely, Malaysian Share Registration

Services Sdn Bhd ("MSRSBB") requesting for a list of the shareholders of the 1st plaintiff.

The response from MSRSBB (exh. "6") although prompt being made the very next day, ie, 15 February 2002, was unfortunately, of no assistance to the defendant because it informed the defendant that it was unable to comply with the defendant's request and that the defendant had to obtain the prior approval of the 1st plaintiff before the defendant's request could be acceded to.

A week later, ie, on 22 May 2002, the defendant's solicitors again wrote to MSRSSB (exh. "7") to be furnished with a copy of the share register of the 1st plaintiff, pursuant to s. 160 of the Act.

This time around the response from MSRSSB was not so prompt because it only came a good seven days later, ie, on 29 May 2002. Although it appeared to be a more positive response because it indicated to the defendant that the directors of the 1st plaintiff would be complying with the defendant's request pursuant to s. 160 of the Act subsequent events showed otherwise. This was because on the following day, ie, on 30 May 2002, MSRSSB wrote to the defendant's solicitors (exh. "8") informing them that they had not received any instructions from the 1st plaintiff.

On 30 May 2002, the defendant issued a letter to MSRSSB putting them on notice of their statutory obligations pursuant to s. 160(3) of the Act. MSRSSB then issued a letter dated 31 May 2002 to one Tung Soo Aik, a director of the 1st plaintiff to notify the 1st plaintiff of its obligation under s. 160(3) of the Act. The 1st plaintiff responded on 4 June 2002, instructing MSRSSB to withhold the release of the company's shareholders' list pending their board meeting and confirming that "we will be wholly responsible in consequences thereof". On 7 June 2002 the defendant's solicitors put on record the 1st plaintiff's non-compliance of the 21 days allowed under s. 160(3) of the Act, to furnish the shareholders' list upon request and issued a final notice for compliance failing which complaints would be made to the relevant authorities.

The letters dated 30 May 2002, 31 May 2002, 4 June 2002 and 7 June 2002 are exhibited, collectively, as exh. "9".

It is significant that MSRSSB did not state in any of their letters to the defendant that it had received a letter from the 1st plaintiff allegedly sent by the 1st plaintiff to MSRSSB informing MSRSSB that the 1st plaintiff had no objection to the defendant's request for a copy of the shareholders' list provided the defendant pay a sum of RM3,000 in advance in accordance with s. 160(3) of the Act. Since the 1st plaintiff has not exhibited any proof of posting of the letter (exh. "THC1", encl. "5") the court is satisfied that the letter was

never sent to MSRSSB and that the 1st plaintiff's assertion being a bare assertion should be rejected.

Notwithstanding the obstructive and delaying tactics of the plaintiffs, the defendant managed subsequently to obtain a copy of the 1st plaintiff's shareholders' list and took immediate steps to convene an EGM. On 9 July 2002, the defendant issued a circular to shareholders ("the said circular") and notice of EGM to be held by the defendant at Sri Mas 2 & 3, The City Bay view Hotel, 25-A, Farquhar Street, 10200 Penang on Wednesday, 7 August 2002 at 2.30 pm to consider and vote on the proposed removals and proposed appointments. The said circular was approved by the Kuala Lumpur Stock Exchange before the same was issued. The securities commission was also duly notified and served with a copy of the said circular and notice of EGM. The auditors of the 1st plaintiff were also duly notified and served with a copy of the said circular and notice of EGM. The said circular together with the notice of EGM are exhibited, collectively, as exh. "10".

In fixing the aforesaid date of the EGM, the defendant had to take into account the period of 28 days statutorily required for special notices under the Act. On 9 July 2002 the defendant's solicitors re-sent (exh. "11") the requisition for an EGM together with special notice of intended resolutions to remove directors of the company dated 11 April 2002, on all of the directors in order to comply with s. 128(2) of the Act, in the event the 1st plaintiff had failed to do so.

Had a copy of the company's shareholders' list been supplied to the defendant on 15 May 2002 or at the very latest within seven days from 14 May 2002 ie, before 22 May 2002 the defendant would have had two months which would have been sufficient time to convene the meeting on or before 22 July 2002.

The court is in agreement with Dato' Mahinder Singh Dulku that in view of the words "shall not be held" in the concluding phrase of s. 144(3) of the Act, ie, "but any meeting so convened shall not be held after the expiration of three months from that date" the negative provision is a mandatory one and not merely a directory one. Consequently, the court cannot allow the defendant's solicitors' notice dated 9 July 2002 convening the meeting to be held on 7 August 2002 to remain operative since 7 August 2002 was clearly outside the three months period provided and intended by the legislature when enacting s. 144(3) of the Act.

The reason is because where a statute requires an act to be done within a particular time, the question arises whether the validity of the act is affected in a failure to comply with what is prescribed.

The following excerpt taken from *Halsbury's Laws of England*, 4th edn, vol 44, para. 933 is relevant:

> 933. Mandatory and directory enactments.
>
> If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as "mandatory", "absolute", "imperative" or "obligatory"; if, on the other hand, compliance was not intended to govern the validity of what is done, the provision is said to be "directory".
>
> No universal rule can be laid down for determining whether provisions are mandatory or directory; in each case the intention of the legislature must be ascertained by looking at the whole scope of the statue and, in particular, at the importance of the provision in question in relating to the general object to be secured. Thus it is not possible to generalise by reference to the nature of what is prescribed. *No great reliance can be placed, either, on the suggestion that provisions framed purely in affirmative language are normally construed as directory, although the converse proposition, that negative provisions are prima facie mandatory, would seem on principle to be less open to criticism*. (emphasis added)

In the case of *Datuk Hamzah Abdul Majid & Anor v. Wembley Industries Holdings Berhad* [1998] 4 CLJ Supp 471 at p. 474, para g onwards Abdul Aziz Mohamad, (as His Lordship then was) observed as follows in respect of the effect of s. 144(3) of the Act:

> The position is different under sub-s. (3). There, it is expressly stated that a meeting convened by the requisitionists themselves "shall not be held after the expiration of three months" from the date the requisition is deposited. The sub-section forbids the holding of the meeting itself after the three months. I am able to discern a rationale for that. As I said, sub-s. (3) gives the requisitionists the right of self-help, and, as stated in *Re Ariadne Australia Ltd*, 2 ACLR 791, at p. 794, it is "to cloak the requisitionists with the power to act in place of the directors where the directors are refusing to call a meeting of shareholders which they are obliged to call." The rationale has to do with the maintenance of good order in a company. If the right of the requisitionists to themselves convene a meeting is viewed as a legally-sanctioned usurpation of the role of the established power, namely the directors, in order to achieve what the requisitionists themselves want, it is understandably desirable that, the power now being in their hands to achieve it, they must not dally in achieving it. The state of usurpation must not be allowed to go on for longer than is necessary. **Thus the meeting that they convene must not be allowed to be held after the three months**.
> (Emphasis added)

The court also agrees with Dato' Mahinder Singh Dulku that before the court can exercise the discretion conferred upon it by s. 355(4) of the Act to enlarge the time for the holding of the EGM outside the three months period stipulated in s. 144(3) of the Act there must be a proper application before the court and that the defendant cannot apply for enlargement of time simply by way of an oral application and a statement in para. 28 of its affidavit-in-reply at encl. 4 to oppose the plaintiffs' application.

In my judgment, although the court agrees with Mr Loh Siew Cheang following the case of *Lim Hean Pin v. Thean Seng Co Sdn Bhd & Others* [1992] 2 MLJ 10 at p. 33 that s. 355(3) of the Act empowers the court to make a validation order in respect of proceedings at company meetings provided no injustice is done to the company or to any member or creditors thereof the court has no judicial discretion to validate the notice convening the meeting because the validation that is really required is essentially of the EGM to be held on 7 August 2002 because the event ie, the EGM has not taken place yet. It follows, therefore, that s. 355(3) of the Act is inapplicable because there is nothing at this stage of the proceedings for the court to validate since the EGM being a future event has yet to be held at the time of the hearing of the application. (See the Supreme Court case of *See Nyuk Fung & Ors v. Pan Global Equities Bhd* [1991] 1 MLJ 152).

Consequently, the court declared the notice to be null and void and of no effect, granted an interim injunction to restrain the defendant from holding the EGM on 7 August 2002 until the final determination of the proceedings or until further order of the court, ordered the defendant to bear the costs of the proceedings and for damages to be assessed by the senior assistant registrar and paid to the plaintiffs by the defendant.

Nevertheless, in view of the obstructive and delaying acts of the defaulting directors, the court gave liberty to the defendant to apply formally for enlargement of time by ruling that there was nothing to stop the defendant from making a proper application for enlargement of time if it so chooses to do so subsequently and that the interlocutory injunction granted by the court will remain effective until further order of the court.